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Legal & Regulatory Group

April 12, 2001

BY REGULAR MAIL

Federal Motor Carrier Safety Administration (FMCSA)
Docket Clerk, U.S. Department of Transportation Dockets, Room PL-401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Re: Safety Requirements for Operators of Small
Passenger-Carrying Commercial Motor Vehicles
Used in Interstate Commerce; 49 CFR Parts 385,
390, and 398; Docket No. FMCSA-2000-7017-22

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1,000,000 people nationwide, yet more than 60% are small businesses as defined by the Small Business Administration.

Earlier this year, the FMCSA proposed to apply certain federal motor carrier safety regulations (FMCSRs) to motor carriers operating commercial motor vehicles designed to transport between 9 and 15 passengers, including the driver. 66 Fed. Reg. 2767, *et seq.* (January 11, 2001). On the same day, the FMCSA issued a final rule defining small commercial motor vehicles. 66 Fed. Reg. 2756, *et seq.* That rule stated the FMCSA's interpretation that "for-hire" or "for compensation" carriage covers business enterprises that assess a direct or indirect fee, monetary or otherwise, for the transportation of passengers. In its October 5, 1998 and October 20, 1999, comments on that rule, NADA took exception to the FMCSA's interpretation and suggested that any "for compensation" definition should not cover situations where incidental transportation is being provided for "free" (or at no extra charge). In its final definitional rule, the FMCSA maintained its interpretation. At the same time, the agency stated that businesses conducting incidental transportation where no direct compensation is involved need only comply with the FMCSR's motor carrier and vehicle identification requirements and accident reporting provisions.

Federal Motor Carrier Safety Administration (FMCSA)

April 12, 2001

Page 2

The January 11, 2001, proposed rule reiterated the agency's "for compensation" interpretation, while acknowledging that virtually all comments addressing the definitional rule had objected to any FMCSR regulation of 9-15 passenger vehicles used by a business entity for "free" and incidental transportation. NADA once again urges the FMCSA to recognize that it has the authority and should promulgate a categorical exemption for carriage involving 9 to 15 passenger vehicles which is incidental and "free" (or at no extra charge).

Medium sized vans and limousines not operated for direct compensation are already governed by state and local licensing, inspection, and traffic surveillance laws. The identification and accident reporting requirements may well cause some dealers and customers (such as school bus and van pool operators) to consider operating exclusively in intrastate commerce or to purchase or lease and operate vehicles with no more than 8 seating positions. NADA also has suggested to dealers operating shuttles that they establish a policy making their service available to customers and non-customers alike. As stated in previous comments, NADA is unaware of dealers who charge shuttle riders a direct fee or who charge customers who ride these shuttles more for vehicle repair or service work than for customers who do not.

On behalf of NADA, I thank the FMCSA for the opportunity to comment on this matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Douglas I. Greenhaus".

Douglas I. Greenhaus
Director, Environment, Health and Safety